4. SUMMARY OF APPLICABLE FEDERAL STATUTES AND REGULATIONS

This chapter discusses the federal regulations that may apply to local governments. The purpose of this chapter is to highlight and briefly describe the applicable federal requirements and to provide citations for more detailed information. The descriptions within this chapter are intended solely for general information. Depending on the nature or scope of the local government activities, these summaries may or may not necessarily describe all applicable environmental requirements. Moreover, they do not constitute formal interpretations or clarifications of the statutes and regulations. This chapter also discusses proposed regulations that may affect local governments.

As a supplement to this chapter, Appendix D presents a detailed matrix of local government activities organized by the operations presented in Chapter 3. For each activity, the matrix identifies the federal environmental statutes that may regulate that specific activity. Local governments can use the matrix as a quick reference to determine which statutory programs may regulate specific activities.

4.1 CLEAN AIR ACT

The Clean Air Act (CAA) and its amendments, including the Clean Air Act Amendments (CAAA) of 1990, are designed to "protect and enhance the nation's air resources so as to promote the public health and welfare and the productive capacity of the population." The CAA consists of six sections, known as Titles, which direct EPA to establish national standards for ambient air quality and for EPA and the states to implement, maintain, and enforce these standards through a variety of mechanisms. Under the CAAA, many facilities will be required to obtain permits for the first time. State and local governments oversee, manage, and enforce many of the requirements of the CAAA. CAA regulations appear at 40 CFR Parts 50-99.

- **National Ambient Air Quality Standards.** Pursuant to Title I of the CAA, EPA has established national ambient air quality standards (NAAQSs) to limit levels of "criteria pollutants," including carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide. Geographic areas that meet NAAQSs for a given pollutant are classified as attainment areas; those that do not meet NAAQSs are classified as non-attainment areas. Under Section 110 of the CAA, each State must develop a State Implementation Plan to

identify sources of air pollution and to determine what reductions are required to meet federal air quality standards.

- **New Source Performance Standards.** Title I also authorizes EPA to establish New Source Performance Standards (NSPSs), which are nationally uniform emission standards for new stationary sources falling within particular industrial categories. NSPSs are based on the pollution control technology available to that category of industrial source. New municipal waste combustors or sewage sludge incinerators may be subject to these standards.

- **National Emission Standards for Hazardous Air Pollutants.** Under Title I, EPA establishes and enforces National Emission Standards for Hazardous Air Pollutants (NESHAPs), which are nationally uniform standards oriented toward controlling particular hazardous air pollutants (HAPs). Title I, Section 112(c) of the CAA further directed EPA to develop a list of sources that emit any of 189 HAPs and to develop regulations for these categories of sources. To date, EPA has listed 174 categories and developed a schedule for the establishment of emission standards. The emission standards will be developed for both new and existing sources based on "maximum achievable control technology" (MACT). MACT is defined as the control technology achieving the maximum degree of reduction of HAP emissions, taking into account cost and other factors. Unless a local government operates a treatment, storage, and disposal facility or stores significant quantities of organic chemicals, it is not likely to be subject to the NESHAP requirements.

- **Mobile Sources.** Title II of the CAA pertains to mobile sources, such as cars, trucks, buses, and planes. EPA uses reformulated gasoline, automobile pollution control devices, and vapor recovery nozzles on gas pumps, among other mechanisms, to regulate mobile air emission sources. Local governments may be subject to these standards if they operate vehicles or large fleets of vehicles or if they conduct fueling operations.

C **Sulfur Dioxide/Nitrous Oxide Emissions.** Title IV of the CAA establishes a sulfur dioxide/nitrous oxide emissions program designed to reduce the formation of acid rain. Sulfur dioxide releases will be reduced by granting to certain sources limited emissions allowances, which are below previous levels of sulfur dioxide releases. Local governments that operate municipal waste combustors, sewage sludge incinerators, or large boilers/generators may be subject to these requirements.

C **Major Source Permit Program.** Title V of the CAAA of 1990 created a permit program for all "major sources" (and certain other sources) regulated under the CAA. One purpose of

the operating permit is to include in a single document all air emissions requirements that apply to a given facility. States are developing the permit programs in accordance with guidance and regulations from EPA. Once EPA approves a state program, that state will issue and monitor permits.

C **Stratospheric Ozone Protection.** Title VI of the CAA is intended to protect stratospheric ozone by phasing out the manufacture of ozone-depleting chemicals and restricting their use and distribution. The production of Class I substances, including 15 kinds of chlorofluorocarbons and chloroform, were phased out (except for essential uses) in 1996. Local governments that conduct vehicle or building air conditioner maintenance and repair are subject to these requirements.

- **Risk Management Planning.** Section 112(r) of the amended CAA mandates a new federal focus on the prevention of chemical accidents. The objective of Section 112(r) is to prevent serious chemical accidents that could affect public health and the environment. Under these requirements, industry is obligated to prevent accidents, operate safely, and manage hazardous chemicals in a safe and responsible way. Under the new CAA requirements, stationary sources (facilities) must identify and assess their chemical hazards and carry out certain activities designed to reduce the likelihood and severity of accidental chemical releases. Information summarizing these activities will be available to state and local governments, the public, and all other stakeholders. Using this information, citizens can work with industry to reduce risks to the community from chemical accidents.

  In the broadest sense, risk management planning relates to local emergency preparedness and response, to pollution prevention at facilities, and to worker safety. In a more focused sense, it forms one element of an integrated approach to safety and complements existing industry codes and standards. The risk management planning requirements build on the Occupational Safety and Health Administration's (OSHA) Process Safety Management Standard.

In general, large, urban local governments and governments near pristine areas, such as national parks and wilderness areas, will be subject to the most stringent CAA requirements. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

The following proposed regulations under the CAA are currently in the development process:

- **New Source Performance Standard: Sewage Sludge Incinerators.** Section 129 of the CAAA requires the EPA Administrator to establish new source performance standards and

emission guidelines for new and existing solid waste incineration units, including units that incinerate municipal sewage sludge. The standards and guidelines are to specify numerical emission limitations for the following substances: particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. In addition, the standards and guidelines are to include requirements for emissions and parameter monitoring as well as provisions for operator training and certification. This final action is expected to be completed and published in May 2000.

- **National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.** Section 112 of the CAAA requires the EPA Administrator to regulate the emissions of HAPs from stationary sources by establishing national emission standards. The standards reflect the maximum degree of reduction in HAP emissions through application of a MACT. The proposed emission standards for Publicly Owned Treatment Works (POTWs) would require control for HAP emissions from each new or reconstructed POTW that is a major source of HAP. The standards would also require each existing and new POTW that treats specific industrial user waste streams from an individual user—for the purpose of allowing that industrial user to comply with another NESHAP—to meet the treatment and control requirements of the relevant NESHAP. EPA has specifically requested comments on pretreatment and wastewater collection systems to help determine the importance of their effect on HAP emissions from POTWs. The final rule is expected in May 1999.

4.2 CLEAN WATER ACT

The primary objective of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), is to restore and maintain the chemical, physical, and biological integrity of the nation's surface waters. The CWA regulates "priority" pollutants, including various toxic pollutants; "conventional" pollutants, such as biochemical oxygen demand, total suspended solids, fecal coliform, oil and grease, and pH; and "non-conventional" pollutants, including any pollutant not identified as either conventional or priority.

- **NPDES Permits.** The CWA regulates both direct and indirect discharges. The National Pollutant Discharge Elimination System (NPDES) program (CWA Section 402) controls direct discharges into navigable waters. Direct discharges or "point source" discharges are from such sources as pipes and sewers. These include discharges of industrial and municipal wastewater, as well as storm water conveyed through a municipal separate storm water

system. NPDES permits, issued by either EPA or an authorized state (EPA has authorized 43 states and the U.S. Virgin Islands to administer the NPDES program), contain industry-specific, technology-based and/or water quality-based limits and establish pollutant monitoring requirements. Each municipal or industry facility that intends to discharge into the nation's waters must obtain a permit prior to initiating its discharge. A permit applicant must provide quantitative analytical data identifying the types of pollutants present in the facility's effluent. The permit then sets the conditions and effluent limitations on the facility discharges.

An NPDES permit may also include discharge limits based on federal or state water quality criteria or standards that were designed to protect designated uses of surface waters, such as supporting aquatic life or recreation. These standards, unlike the technological standards, generally do not take into account technological feasibility or costs. Water quality criteria and standards vary from state to state and from site to site, depending on the use classification of the receiving water body. Most states follow EPA guidelines, which propose aquatic life and human health criteria for many of the 126 priority pollutants.

Local governments that own and operate wastewater treatment plants are required to apply for and obtain an NPDES permit. These permits contain a variety of required elements, including discharge limits; monitoring, reporting, and recordkeeping requirements; and biosolids requirements.

- **Combined Sewer Systems Permit Provisions.** EPA's 1994 Combined Sewer Overflow (CSO) Control Policy provides recommended NPDES permit conditions for municipalities with combined sewer systems. These provisions, which are typically implemented by the permitting authority, include requirements for meeting the nine minimum controls to reduce the frequency and water quality impacts of CSO events and to establish a long-term control plan to address capital improvements to the system. Local governments that operate and maintain a combined collection system must abide by these requirements, which are included as part of the NPDES permit.

Defining "Municipal" Sewer Systems

EPA uses a broad definition of "municipal" in defining municipal sewer systems. Municipal systems are defined as conveyances that are owned or operated by a state, city, town, borough, county, parish, district, association, or other public body having jurisdiction of disposal of sewage, industrial wastes, storm water, or other wastes. This includes special districts under state law, such as a sewer district, flood control district or drainage district, or other similar entity; an Indian tribe or an authorized Indian tribal organization; or a designated and approved management agency under Section 208 of the CWA.

- **Storm Water Discharges.** In 1987, the CWA was amended to require EPA to establish a program to address storm water discharges. In response, EPA promulgated the NPDES storm water regulations. Implemented in two phases, the first phase requires local governments that operate large (serving a population greater than 250,000) or medium (serving a population from 100,000 to 250,000) municipal separate storm water systems to apply for and obtain an NPDES storm water permit. During phase 2 of the storm water program, local governments operating regulated small municipal separate storm water systems will be required to submit a Notice of Intent to EPA to be covered under a national general storm water permit.

  In addition to requiring storm water permits for collection systems, the CWA may also require industrial or local government operations to obtain or be covered by storm water permits. Such operations may include construction activities (e.g., roads, buildings) or storage of chemicals or hazardous materials.

- **Pretreatment Program.** The CWA also regulates discharges to POTWs. The national pretreatment program (CWA Section 307(b)) controls the indirect discharge of pollutants to POTWs by "industrial users." Facilities regulated under Section 307(b) must meet certain pretreatment standards. The goal of the pretreatment program is to protect municipal wastewater treatment plants from damage that may occur when hazardous, toxic, or other wastes are discharged into a sewer system and to protect the quality of sludge generated by these plants. Discharges to a POTW are regulated primarily by the POTW itself, rather than the state or EPA.

  EPA has developed technology-based standards for certain industrial users of POTWs. Different standards apply to existing and new sources within each category. EPA develops these "categorical" pretreatment standards applicable to an industry on a nationwide basis. In addition, a POTW develops another kind of pretreatment standard, "local limits," to assist the POTW in achieving the effluent limitations in its NPDES permit.

  Regardless of whether a state is authorized to implement either the NPDES or the pretreatment program, it may enforce requirements more stringent than federal standards.

  Local governments that own and operate POTWs must meet the requirements for a pretreatment program under the CWA. In such situations, the local government becomes the regulator and establishes limits that must be met by industries discharging to the POTW.

- **Sludge Management.** Section 503 of the CWA and the associated regulations govern land application and land disposal of sludge generated from municipal wastewater treatment. The Section 503 regulations establish provisions for sludge quality, application rates, and environmental conditions under which land application is permitted. The regulations also specify management methods, monitoring, and recordkeeping for both disposal and land application facilities. Local governments that produce sludge from their wastewater treatment operations are subject to the Section 503 regulations.

- **Spill Prevention, Control, and Countermeasure Plans.** The 1990 Oil Pollution Act requires facilities that could reasonably be expected to discharge oil in harmful quantities to prepare and implement more rigorous Spill Prevention, Control, and Countermeasure (SPCC) Plans required under the CWA (40 CFR Section112.7). The SPCC regulations also require specific management procedures for loading, unloading, and storing petroleum products. The regulations delineate criminal and civil penalties for deliberate or negligent spills of oil. Regulations covering response to oil discharges and contingency plans (40 CFR Part 300), as well as facility response plans to oil discharges (40 CFR Section112.20) and for PCB transformers and PCB-containing items, were revised and finalized in 1995. Local governments that maintain fueling operations must comply with the SPCC regulations.

Many local governments conduct operations that are directly regulated by the CWA. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

The following proposed regulations are currently in the development process:

- **NPDES Comprehensive Storm Water Phase II Regulations.** Expected in 1999. See Section 4.2 for a description of the Storm Water Program.

C **NPDES Wastewater Permit Application Forms and Regulatory Revisions for Municipal Discharges and Sewage Sludge Use or Disposal**. The purpose of this action is to revise and consolidate existing application forms and requirements for POTWs and other treatment works treating domestic sewage, as well as to streamline the application process for these facilities. The Agency seeks to establish a unified process that minimizes the need for additional information from applicants while providing permit writers the necessary information, including toxics data, to ensure that permits adequately address concerns of permittees and environmental protection. The Agency seeks to allow the use of existing data and to avoid unnecessary reporting. The Agency is also considering how to utilize electronic data submission. Although these forms will increase the burden on permittees not already

required to submit these data, EPA is minimizing the need for information from small entities, including tribal facilities. The burden on states would be minimized because of improvements to the application forms. This final action is expected in 1999.

C **Revisions to NPDES Requirements for Compliance Reporting and Collection System Discharges**. EPA is proposing revisions to the NPDES regulations. The proposed revisions would clarify how standard noncompliance reporting requirements and prohibition/defense provisions in NPDES permits apply to discharges from sanitary sewer and combined sewer collection systems owned and operated by municipal entities. These proposed revisions respond to recommendations made by a FACA Subcommittee (under the Urban Wet Weather Federal Advisory Committee) that was convened by EPA to provide recommendations for improving NPDES program implementation efforts that address SSOs and sanitary sewer operation, management, and maintenance. The proposed revisions would address combined sewers, as well as separate sanitary sewers, to avoid confusion among the regulatory community. Failures in sewer collection systems can result in discharges of wastewater containing raw sewage to surface waters. Pathogens and other pollutants in these discharges can create significant health and environmental risks. The SSO FACA Subcommittee identified inconsistent application of several key NPDES provisions to SSOs as a major implementation problem. There is substantial agreement among the SSO FACA Subcommittee that EPA should modify the NPDES regulations to clarify how noncompliance reporting and prohibition/defense provisions apply to dischargers to waters of the U.S. from a sanitary sewer collection system. The proposed action is expected in 1999.

4.3 COASTAL ZONE ACT REAUTHORIZATION AMENDMENTS OF 1990

The Coastal Zone Management Act (CZMA) encourages states/tribes to preserve, protect, develop, and where possible, restore or enhance valuable natural coastal resources such as wetlands, floodplains, estuaries, beaches, dunes, barrier islands, and coral reefs, as well as the fish and wildlife using those habitats. It includes areas bordering the Atlantic, Pacific, and Arctic Oceans, Gulf of Mexico, Long Island Sound, and Great Lakes. A unique feature of this law is that participation by states/tribes is voluntary. To encourage states/tribes to participate, the act makes federal financial assistance available to any coastal state, tribe, or Territory, including those on the Great Lakes, that is willing to develop and implement a comprehensive coastal management program. Most eligible states/tribes are, or will be, participating in the program.

In its reauthorization of the Coastal Zone Management Act in 1990, Congress identified nonpoint source pollution as a major factor in the continuing degradation of coastal waters. Congress also recognized that effective solutions to nonpoint source pollution could be implemented at the state/tribe and local levels. Therefore, in the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), Congress added Section 6217, which calls upon states/tribes with federally-approved coastal zone management programs to develop and implement coastal nonpoint pollution control programs. The Section 6217 program is administered at the federal level jointly by EPA and the National Oceanic and Atmospheric Agency (NOAA).

Section 6217(g) of CZARA called for EPA, in consultation with other agencies, to develop guidance on "management measures" for sources of nonpoint source pollution in coastal waters. Under Section 6217 of CZARA, EPA is responsible for developing technical guidance to assist states/tribes in designing coastal nonpoint pollution control programs. On January 19, 1993, EPA issued its *Guidance Specifying Management Measures For Sources of Nonpoint Pollution in Coastal Waters*, which addresses five major source categories of nonpoint pollution: (1) urban runoff, (2) agriculture runoff, (3) forestry runoff, (4) marinas and recreational boating, and (5) hydromodification.

Depending on their geographical locations, local governments may be responsible for contributing to the above mentioned programs. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

4.4 COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a 1980 law known commonly as Superfund, authorizes EPA to respond to releases or threatened releases of hazardous substances that may endanger public health, welfare, or the environment. CERCLA also enables EPA to force parties responsible for environmental contamination to clean it up or to reimburse the Superfund for response costs (including remediation costs) incurred by EPA. The Superfund Amendments and Reauthorization Act (SARA) of 1986 revised various sections of CERCLA, extended the taxing authority for the Superfund, and creating a free-standing law, SARA Title III, also known as the Emergency Planning and Community Right-to-Know Act (EPCRA).

The CERCLA hazardous substance release reporting regulations (Section 103; 40 CFR Part 302) direct the person in charge of a facility to report to the National Response Center any environmental release of a hazardous substance that equals or exceeds a reportable quantity.

Reportable quantities are listed in 40 CFR Section 302.4. A release report may trigger a response by EPA or by one or more federal or state emergency response authorities.

EPA implements hazardous substance responses according to procedures outlined in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300). The NCP includes provisions for permanent cleanups, known as remedial actions, and other cleanups, referred to as removals. EPA generally takes remedial actions only at sites on the National Priorities List, which currently includes approximately 1,300 sites. Both EPA and states can act at sites; however, EPA provides responsible parties the opportunity to conduct removal and remedial actions and encourages community involvement throughout the Superfund response process.

Local governments are generally not involved with hazardous waste cleanup as part of normal operations. However, many local government operations have the potential to generate hazardous waste. In reviewing the requirements of CERCLA, it is important for local governments to assess the impacts of all their operations to minimize environmental impacts and to reduce the potential CERCLA liability. In particular, local governments should maintain tight controls on landfill and incinerator operations, vehicle maintenance operations, underground and above ground storage tanks, and any other activities or operations that could significantly affect the environment. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

4.5 EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

As mentioned previously, the SARA of 1986 created the Emergency Planning and Community Right-to-Know Act (EPCRA, also known as SARA Title III), a statute designed to improve community access to information about chemical hazards and to facilitate the development of chemical emergency response plans by state and local governments. EPCRA required the establishment of state emergency response commissions (SERCs), which are responsible for coordinating certain emergency response activities and for appointing local emergency planning committees (LEPCs).

EPCRA and its regulations (40 CFR Parts 350-372) establish four types of reporting obligations for facilities that store or manage specified chemicals:

- **EPCRA Section 302** requires facilities to notify the SERC and LEPC of the presence of any extremely hazardous substance (the list of such substances is in 40 CFR Part 355,

Appendices A and B) in excess of the substance's threshold planning quantity and directs the facility to appoint an emergency response coordinator.

- **EPCRA Section 304** requires the facility to notify the SERC and the LEPC in the event of a release equaling or exceeding the reportable quantity of a CERCLA hazardous substance or an EPCRA extremely hazardous substance.

- **EPCRA Sections 311 and 312** require a facility at which a hazardous chemical, as defined by the Occupational Safety and Health Act, is present in an amount exceeding a specified threshold to submit to the SERC, LEPC, and local fire department material safety data sheets (MSDSs) or lists of MSDSs and hazardous chemical inventory forms (also known as Tier I and II forms). This information helps the local government respond in the event of a spill or release of the chemical.

- **EPCRA Section 313** requires manufacturing facilities included in SIC codes 20 through 39, as well as SIC codes 10, 12, 4911, 4931, 4939, 4953, 5169, 5171, and 7389, that have 10 or more employees and that manufacture, process, or use specified chemicals in amounts greater than threshold quantities to submit an annual toxic chemical release report. This report, known commonly as Form R, covers releases and transfers of toxic chemicals to various facilities and environmental media and allows EPA to compile the national Toxic Release Inventory (TRI) data base.

  Since local governments do not have operations that fall within the identified SIC codes, they are not subject to Section 313 reporting requirements.

Hazardous chemicals may be used as refrigerants, for cleaning, for disinfecting, or for other maintenance activities. If a local government stores or uses specified amounts of certain chemicals, it may be subject to planning and reporting requirements of EPCRA. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

4.6 ENDANGERED SPECIES ACT

The Endangered Species Act (ESA) establishes a program for conserving endangered and threatened species and their habitats. The ESA affords broad protection for species of fish, wildlife, and plants that are listed as endangered and threatened in the United States and elsewhere. Provisions are made for listing species, as well as for recovery plans and the designation of critical habitat for listed species. Anyone can petition the Fish and Wildlife

Service (FWS) to list a species. The ESA strives to conserve ecosystems both through federal action and through the establishment of state programs. The law outlines procedures for federal agencies to follow when taking actions that may jeopardize listed species or their habitats. The ESA is the enabling legislation for the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

The ESA requires the Secretary of the Interior (Secretary), acting through the FWS, to list species as endangered or threatened when certain factors, including habitat destruction, overutilization, disease or predation, inadequacy of regulatory mechanisms, or other natural or manmade factors, warrant such a listing. In the case of marine plants, fish, or wildlife, the Secretary of Commerce, acting through the Marine Fisheries Service (MFS), determines whether to list a species or change the status of a species. When determining that a species is endangered or threatened, the Secretary must, to the maximum extent prudent and determinable, designate critical habitat. In addition, the Secretary must develop and implement recovery plans for the conservation and survival of endangered and threatened species.

Under the ESA, the Secretary must cooperate to the maximum extent practicable with states and may enter into management agreements with states for the administration of particular conservation areas. The Secretary is also authorized to enter into cooperative agreements with states that establish and maintain adequate and active programs for conservation of listed species. State laws or regulations may be more, but not less, restrictive than the ESA or its regulations.

When taking action, federal agencies must consult with the FWS or MFS to ensure that such action is not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of a critical habitat of a species. If jeopardy or adverse modification is likely, the FWS or MFS must suggest reasonable and prudent alternatives to the agency and the applicant.

The ESA prohibits the taking, possession, import, export, sale, and transport of any listed fish or wildlife species. The term “take” includes harassing, harming, hunting, killing, capturing, and collecting. It is also unlawful to maliciously damage, destroy, or remove from any area under federal jurisdiction, damage or remove from any other area in knowing violation of state law, import, export, or trade any listed plant species. These prohibitions do not apply to species legally held in captivity or a controlled environment. In addition, the FWS or MFS may permit a prohibited act for scientific purposes, for the establishment and maintenance of experimental populations, or for the enhancement of the propagation and survival of an affected species. The FWS or MFS, by permit, may also allow a taking incidental to an otherwise lawful activity if the

applicant submits, and the FWS or MFS approves, a conservation plan addressing the impact of the taking, mitigation measures, funding, and alternative actions considered.

Requirements of the ESA may be triggered if local governments conduct activities along these guidelines. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

4.7 FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is a comprehensive regulatory statute that addresses the sale, distribution, and labeling of pesticides, as well as the certification and training of pesticide applicators. FIFRA also imposes selected record keeping and reporting requirements on certified applicators of restricted use pesticides, as well as imposing storage, disposal, and transportation requirements on registrants and applicants for registration of pesticides.

The primary purpose of FIFRA is to regulate the labeling and the subsequent use of pesticides. Pesticide use is regulated through requirements to apply pesticides in a manner consistent with the label. The labeling requirements include directions for use, warnings, and cautions, along with the uses for which the pesticide is registered (i.e., pests and appropriate applications). The labeling requirements reflect regulatory program determinations made with respect to particular products. For example, the worker protection standard of FIFRA includes specific restrictions on the entry of workers into areas after pesticide applications, as well as requirements for the use of personal protective equipment. (40 CFR Part 170). Labeling requirements also include specific conditions for the application, mixture, storage, and time period for re-entry to fields following pesticide application, and when crops may be harvested after applications. If a pesticide is used in a manner contrary to its labeling, that use constitutes a violation of FIFRA.

FIFRA has an array of other requirements, including record keeping, storage, and handling, that are applicable to pesticide producers (registrants) and certified applicators. The intent of these requirements is to regulate the use and management of pesticides so these products do not pose an unreasonable risk to human health or the environment.

For example, FIFRA Section 136f(b), Inspections, contains requirements that apply to producers, distributors, carriers, dealers, and persons who sell or offer for sale pesticide devices. These groups or individuals are required to allow regulatory authorities to inspect records related to the delivery, movement, or holding of pesticides. These records include the quantity, date of

shipment, receipt, and name of the consignor and consignee. FIFRA Section 136i-1, Pesticide Record keeping, requires that certified applicators of restricted use pesticides (Section 136a(d)(1)(C)) maintain records regarding the product name, amount, approximate date of application, and location of application of each pesticide used for a 2-year period.

FIFRA Section 136q(a), Storage, Disposal, and Transportation, includes requirements for developing methods by registrants for safe storage, transportation, and disposal of excess quantities of pesticides, as well as the labeling to reflect this information. Registrants must also develop information on the procedures for transport, storage, and disposal of the pesticide, any container of the pesticide, and rinsate containing the pesticide, or any other material used to contain or collect excess or spilled quantities of the pesticide. Many of these requirements also extend to suspended/canceled pesticides. FIFRA Section136q(e), Container Design, presents requirements for containers used to hold pesticides, as well as procedures governing pesticide removal, including disposal of rinsates and residues.

In summary, FIFRA presents a complex regulatory program for the regulation of pesticide labeling and use. States are the primary enforcement authority for pesticide use violations; however, states may not enact more stringent labeling requirements than those specified under FIFRA. Once the federal authority has approved a particular label, a regulatory authority cannot alter or amend it. States are empowered to restrict the sale or use of a federally registered pesticide, but may not allow the sale or use of a federally prohibited product.

Local governments may use pesticides to maintain building appearance and prevent or eradicate disease-carrying vectors. These operations may be subject to regulation under FIFRA. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

4.8 NATIONAL ENVIRONMENTAL POLICY ACT

The National Environmental Policy Act (NEPA) was one of the first laws written to establish the broad national framework for protecting our environment while bolstering the health and welfare of humankind. Congress, recognizing the profound impact of humankind's activity on the natural environment, declared it a policy for the federal government, in cooperation with state and local governments, to give proper consideration to the environment prior to undertaking any major federal action that could significantly affect the environment.

The most visible NEPA requirements are environmental assessments (EAs) and environmental impact statements (EISs). These studies are performed for any major federal action that could

significantly impact the environment and consider the likelihood of environmental impacts, alternatives to the proposed action, and the long-term effects the action could have on the environment, resources, and humankind. The policy requirements are invoked when airports, buildings, military complexes, highways, parkland purchases, and other federal activities are proposed. EAs and EISs are required from all federal agencies.

Some activities undertaken by local governments may require compliance with provisions of NEPA, including the preparation of an EA or EIS. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

4.9 RESOURCE CONSERVATION AND RECOVERY ACT

The Resource Conservation and Recovery Act (RCRA) of 1976, which amended the Solid Waste Disposal Act, addresses nonhazardous (Subtitle D) and hazardous (Subtitle C) waste management activities. The Hazardous and Solid Waste Amendments (HSWA) of 1984 strengthened RCRA's waste management provisions and added Subtitle I, which governs underground storage tanks (USTs).

Regulations promulgated pursuant to Subtitle C of RCRA (40 CFR Parts 260-299) establish a "cradle-to-grave" system governing hazardous waste from the point of generation to disposal. RCRA hazardous wastes include the specific materials listed in the regulations (commercial chemical products designated with the code "P" or "U", hazardous wastes from specific industries/sources designated with the code "K", or hazardous wastes from non-specific sources, designated with the code "F") or materials that exhibit a hazardous waste characteristic (ignitability, corrosivity, reactivity, or toxicity and designated with the code "D").

Regulated entities that generate hazardous waste are subject to waste accumulation, manifesting, and record keeping standards. Facilities generally must obtain a permit either from EPA or from a state agency that EPA has authorized to implement the permitting program if they store hazardous wastes for more than 90 days before treatment or disposal. Facilities may treat less-than-90-day tanks or containers of hazardous wastes without a permit. Subtitle C permits contain general facility standards, such as contingency plans, emergency procedures, record keeping and reporting requirements, financial assurance mechanisms, and unit-specific standards. RCRA also contains provisions (40 CFR Part 264 Subpart S and Section 264.101) for conducting corrective actions that govern the cleanup of releases of hazardous waste or constituents from solid waste management units at RCRA treatment, storage, and disposal facilities.

Although RCRA is a federal statute, many states implement the RCRA program. Currently, EPA has delegated its authority to implement various provisions of RCRA to all states except Alaska, Hawaii, Iowa and two U.S. territories.

Most RCRA requirements are not industry specific but apply to any entity that generates, transports, treats, stores, or disposes of hazardous waste. The following are some important RCRA regulatory requirements:

C **Identification of Solid and Hazardous Wastes** (40 CFR Part 261) delineates the procedure every generator must follow in determining whether the material in question is considered a hazardous waste or solid waste or is exempted from regulation.

C **Standards for Generators of Hazardous Waste** (40 CFR Part 262) establish the responsibilities of hazardous waste generators. These include obtaining an EPA identification number, preparing a manifest, ensuring proper packaging and labeling, meeting standards for waste accumulation units, and meeting record keeping and reporting requirements. Providing they meet additional requirements described in 40 CFR 262.34, generators may accumulate hazardous waste for up to 90 days (or 180 or 270 days depending on the amount of waste generated and the distance the waste will be transported).

C **Land Disposal Restrictions** (LDRs) (40 CFR Part 268) are regulations prohibiting the disposal of hazardous waste on land without prior treatment. Under the LDR program, materials must meet LDR treatment standards prior to placement in a RCRA land disposal unit (landfill, land treatment unit, waste pile, or surface impoundment). Generators of waste subject to the LDR must provide notification of such to the designated TSD facility to ensure proper treatment prior to disposal.

C **Used Oil Management Standards** (40 CFR Part 279) impose management requirements affecting the storage, transportation, burning, processing, and re-refining of the used oil. For parties that merely generate used oil, regulations establish storage standards. For a party considered a used oil processor, re-refiner, burner, or marketer (one who generates and sells off-specification used oil directly to a used oil burner), additional tracking and paperwork requirements must be satisfied.

• **Tanks and Containers**, as well as any unit, used to store, treat, or dispose of hazardous waste, are regulated under RCRA. Tanks and containers used to store hazardous waste with a high volatile organic concentration must meet emission standards under RCRA.

Regulations (40 CFR Part 264-265, Subpart CC) require generators to test the waste to determine the concentration of the waste, to satisfy tank and container emissions standards, and to inspect and monitor regulated units. These regulations apply to all facilities that store such waste, including large quantity generators accumulating waste prior to shipment offsite.

C **Underground Storage Tanks** containing petroleum and hazardous substances are regulated under Subtitle I of RCRA. Subtitle I regulations (40 CFR Part 280) contain tank design and release detection requirements, as well as financial responsibility and corrective action standards for USTs. The UST program also includes upgrade requirements for existing tanks that must be met by December 22, 1998.

C **Boilers and Industrial Furnaces** (BIFs) that use or burn fuel containing hazardous waste must comply with design and operating standards. BIF regulations (40 CFR Part 266, Subpart H) address unit design, provide performance standards, require emissions monitoring, and restrict the type of waste that may be burned.

C **Solid Waste Management** (RCRA Subtitle D) regulations establish standards and guidelines for solid waste collection and disposal programs, as well as recycling programs. The regulations also establish criteria for design, operation, maintenance, and closure for municipal solid waste landfills. In addition, the regulations provide requirements for thermal processing (incineration) and resource recovery facilities.

Local governments may have numerous operations that result in the generation and management of different types of solid and hazardous waste. These operations may be subject to specific parts of RCRA, depending on the type of waste generated, its management (e.g., stored, transported), and its disposal. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

The following proposed regulations under RCRA are currently in the development process:

- **Amendments to Municipal Solid Waste Landfills**. The purpose of this action is to develop standards for regulating emissions of non-methane organic compounds from new and modified municipal solid waste (MSW) landfills under Section 111(b). Section 111(d) requires states to develop emission standards for existing landfills based on EPA guidelines. The intended effect of the standards and guidelines is to require certain municipal solid waste landfills to control emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, non-air quality health, and

environmental and energy impacts. EPA has worked with landfill owners and operators, including local governments and private owners, to produce a regulation based on common-sense techniques, providing maximum flexibility for owners and operators, while achieving the desired emissions reductions in the most cost-effective way. The rule focuses on only the largest sources of emissions, thereby avoiding regulation of small landfills where controls would be inefficient and onerous. The rule also provides complete flexibility to design a control system based on the site-specific conditions at each landfill. The direct final rule was published June 16, 1998, at 63 FR 32743.

- **RCRA Subtitle D Solid Waste Facilities; State Permit Program -- Determination of Adequacy (State Implementation Rule)**. This rule will establish criteria and procedures for EPA to use in determining whether state MSW landfill permit programs and state permit programs relating to non-municipal, nonhazardous waste disposal units that receive conditionally exempt small quantity generator (CESQG) waste are adequate to ensure compliance with the federal revised criteria in 40 CFR Parts 258 and 257, Subpart B, respectively. While the federal revised criteria apply to all MSW landfills and non-municipal, nonhazardous waste disposal units receiving CESQG waste, states with permit programs deemed adequate under this rule can provide some flexibility on certain requirements to owners and operators who meet the revised criteria's performance standards. In providing this flexibility, this action offers an opportunity to reduce the regulatory burden on state and local governments and on landfill owners and operators. The final rule is scheduled for publication in 1999.

- **Hazardous Waste Management System; Modification of the Hazardous Waste Program; Mercury-Containing Lamps**. EPA is considering two deregulatory options for the management of spent mercury-containing lamps based on data that indicate these lamps may be safely managed outside of the RCRA hazardous waste system or with a reduced regulatory structure under RCRA. The options were proposed in a Notice of Proposed Rulemaking on July 27, 1994 (59 FR 38288). Either option selected would have positive impacts on small businesses and state, local, and tribal governments interested in collecting and managing lamps. The EPA Administrator is expected to sign the final action in 1999.

- **Modifications to RCRA Rules Associated with Solvent-Contaminated Shop Towels and Wipers.** This action would modify RCRA rules that affect the management of solvent-contaminated shop towels and wipers. Solvent-contaminated shop towels and wipers are used throughout industry for equipment cleaning and other related facility operations. Many times, the spent shop towels and wipers are considered a hazardous waste because the

solvent used is either a characteristic or a listed solvent. Examination of industry use and management practices reveals that many facilities use only small amounts of solvent on their disposable wipers and small numbers of wipers daily, suggesting that these materials, particularly if listed solvents are being used, pose little or no risk to human health and the environment if disposed of in municipal landfills. Similarly, situations exist where both disposable wipers and reusable shop towels are not being managed according to prescribed federal and states rules and policies. Problems with this issue have persisted since the late 1980s. The EPA Administrator is expected to sign this final action in 1999.

4.10 RIVERS AND HARBORS ACT

The Rivers and Harbors Act addresses harbor and river improvements, projects and activities in navigable waters. This Act provides a number of regulatory authorities, the implementation of which has evolved over time. Section 10 of the act prohibits the unauthorized obstruction or alteration of any navigable water of the United States. This section provides that the construction of any structure in or over any navigable water of the United States or the accomplishment of any other work affecting the course, location, condition, or physical capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The Secretary's approval authority has since been delegated to the Chief of Engineers. If a local government is conducting activities that may affect navigable waters, it may be subject to the Rivers and Harbors Act. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

4.11 SAFE DRINKING WATER ACT

The Safe Drinking Water Act (SDWA) mandates that EPA establish regulations to protect human health from contaminants in drinking water. The law authorizes EPA to develop national drinking water standards and to create a joint federal-state system to ensure compliance with these standards. The SDWA also directs EPA to protect underground sources of drinking water through the control of underground injection of liquid wastes.

Local governments may be responsible for operating and maintaining drinking water systems and providing drinking water to communities and the public. Whether it is providing drinking water to a community or simply to visitors, the local government is responsible for providing safe drinkable water that meets EPA standards. These standards stem from the SDWA, which specifies standards for both community water systems and transient water systems. In addition, any municipal operation that provides water to the public (other than water that it receives from a

public water supply system [i.e., wells or other reservoirs]) may also be required to comply with safe drinking water requirements.

- **Drinking Water Standards.** EPA has developed primary and secondary drinking water standards under its SDWA authority. EPA and authorized states enforce the primary drinking water standards, which are contaminant-specific concentration limits that apply to certain public drinking water supplies. Primary drinking water standards consist of maximum contaminant level goals (MCLGs), which are non-enforceable health-based goals, and maximum contaminant levels (MCLs), which are enforceable limits set as close to MCLGs as possible, considering cost and feasibility of attainment.

  To assure these standards are maintained, SDWA regulations require sampling and monitoring for various contaminants, such as fecal coliform and metals. In addition, the SDWA regulations require specified disinfection and filtration activities, notification when certain contaminants exceed specified levels, and reporting of contaminant limit exceedences.

- **Underground Injection Control.** The SDWA Underground Injection Control (UIC) program (40 CFR Parts 144-148) is a permit program that protects underground sources of drinking water by regulating five classes of injection wells. UIC permits include design, operation, inspection, and monitoring requirements. Wells used to inject hazardous wastes must also comply with RCRA corrective action standards to be granted a RCRA permit, and must meet applicable RCRA land disposal restrictions standards. The UIC permit program is primarily state-enforced, since EPA has authorized all but a few states to administer the program.

- **Sole Source Aquifer Protection.** The SDWA provides for a federally implemented sole source aquifer protection program, which prohibits federal funds from being expended on projects that may contaminate the sole or principal source of drinking water for a given area, and for a state-implemented wellhead protection program, which is designed to protect drinking water wells and drinking water recharge areas.

Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.

The following proposed regulations under the SDWA are currently in the development process:

C **Revision of Existing Variances and Exemptions Regulation to Comply with Requirements of the Safe Drinking Water Act**. This action will revise the existing regulations in accordance with the SDWA Amendments of 1996, regarding the issuance and availability of variances and exemptions (V&E) under the act. Mirroring the statutory language, a section specifically addressing variances for small public water systems will be added, and minor codification changes will be made elsewhere in the existing rule. EPA anticipates that the revisions will have beneficial impacts on small systems. The final rule is scheduled to be signed in 1999.

C **Public Water System Public Notification Regulation**. This action revises an existing regulation to incorporate the new public notification provisions in section 1414(c) of the SDWA. The basic requirement for public water systems with violations of drinking water standards to give public notification is not changed by the 1996 SDWA amendments. A public water system is required under Section 1414(c) of the SDWA to provide notification to its customers whenever: 1) a violation of certain drinking water regulations occurs (including MCL, treatment technique, and monitoring/reporting requirements); 2) a V&E to those regulations is in place or the conditions of the V&E are violated, or 3) results from unregulated contaminant monitoring required under Section 1445 of the SDWA are received. This statute requires the Administrator to prescribe by regulation the manner, frequency, form, and content for giving notice. The existing regulation is in 40 CFR Section 141.32.

The 1996 amendments significantly revise the public notification requirements. The amendments: 1) alter the timing of the notification for certain violations, 2) establish a specific requirement for EPA consultation with the states in issuing revised regulations, 3) allow the state to prescribe alternative notification requirements by rule with respect to the form and content of the notice, and 4) add a new requirement for the state to prepare an annual report on violations and for EPA to prepare a follow-on report summarizing states' reports and public notices submitted by public water systems serving Indian Tribes. One other new requirement—for public water systems to prepare an annual consumer confidence report—is being implemented under a separate regulatory action. The revised public notification regulations will streamline the existing requirements, provide quicker and more effective notification of violations that have a serious adverse effect, and better inform customers of public water systems of the quality of their drinking water and the risk to their health. The EPA Administrator is expected to sign this final action 1999.

4.12 TOXIC SUBSTANCES CONTROL ACT

The Toxic Substances Control Act (TSCA) granted EPA authority to create a regulatory framework to collect data on chemicals to evaluate, assess, mitigate, and control risks that may be posed by their manufacture, processing, and use. TSCA provides a variety of control methods to prevent chemicals from posing unreasonable risk.

TSCA standards may apply at any point during a chemical's life cycle. Under TSCA Section 5, EPA has established an inventory of chemical substances. If a chemical is not already on the inventory and has not been excluded by TSCA, a premanufacture notice (PMN) must be submitted to EPA prior to manufacture or import. The PMN must identify the chemical and provide available information on health and environmental effects. If available data are not sufficient to evaluate the chemicals effects, EPA can impose restrictions pending the development of information on its health and environmental effects. EPA can also restrict significant new uses of chemicals based upon various factors, such as the projected volume and use of the chemical.

Under TSCA Section 6, EPA can ban the manufacture or distribution in commerce, limit the use, require labeling, or place other restrictions on chemicals that pose unreasonable risks. Among the chemicals EPA regulates under Section 6 authority are asbestos, chlorofluorocarbons, and PCBs.

Local governments may handle asbestos, lead paint, and other toxic substances as part of overall operations, as part of building renovations or inspections, or as part of general maintenance of schools and housing units. TSCA regulates the management of and protection from toxic substances. Appendix D contains a detailed matrix of activities and the specific statutes under which they are regulated.